

Message

From: Hurlid, Kathy [Hurlid.Kathy@epa.gov]
Sent: 1/11/2021 8:35:20 PM
To: Christensen, Damaris [Christensen.Damaris@epa.gov]
CC: Beck, Whitney [beck.whitney@epa.gov]
Subject: RE: ACTION due noon Friday, January 15, 2021: Compiling policies for the elevation of disputes between EPA and State/Tribes

Damaris, here is what I recommend for 404(g) – my apologies for getting this to you late!

For elevation MOUs, policies, etc. for disputes b/w EPA and states and tribes

The regulations at 40 CFR 233.50 have an oversight process that lays out procedures for states, tribe, or other interested person who may disagree with EPA's comments, objection or conditions on a permit may seek a hearing.

Additionally

Ex. 5 Deliberative Process (DP)

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Lastly, EPA has approved elevation procedures with respect to state of Florida Clean Water Act 404 permits where they may adversely effect threatened or endangered species or Historic Properties. These elevation procedures can be found in the EPA-FDEP MOA, the Programmatic Agreement under the National Historic Preservation Act (and associated Operating Agreement), and the Biological Opinion issued by the USFWS under ESA. All of these can be found in our docket approving FL's request to assume a CWA section 404 program. <https://beta.regulations.gov/docket/EPA-HQ-OW-2018-0640/document>

From: Christensen, Damaris <Christensen.Damaris@epa.gov>
Sent: Wednesday, January 06, 2021 5:59 PM
To: OW-OWOW-OWCD-PDJB <OW-OWOW-OWCD-PDJB@epa.gov>
Subject: FW: ACTION due noon Friday, January 15, 2021: Compiling policies for the elevation of disputes between EPA and State/Tribes

Hi all,

There's an ask for elevation policies regarding resolution of differences between states, tribes and the EPA. This is to inform a larger EPA process to develop such a policy where it isn't explicit.

Lauren, is there any envisioned process for resolution of disputes over certification in 401? Kathy, what about with assumed programs or the assumption process?

Are there other formal or informal programs or policies y'all can think of in our branch where we might have something relevant? It looks like they are looking for documents, document numbers and POCs.

Ask is for info at the division level by the 15th, so I'd like to get any branch level info to Mindy by next week. However, my term as acting branch chief is up Friday – can people get me info by noon Friday Jan 8? If not let me know and I'll loop Russ in (he is already doing this for his branch anyway). An email saying you don't know of any is sufficient but please don't ignore this.

Damaris

From: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>

Sent: Wednesday, January 06, 2021 5:30 PM

To: Kaiser, Russell <Kaiser.Russell@epa.gov>; Robiou, Grace <Robiou.Grace@epa.gov>; Benson, Robert <Benson.Robert@epa.gov>; Miller, Clay <Miller.Clay@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>

Subject: FW: ACTION due noon Friday, January 15, 2021: Compiling policies for the elevation of disputes between EPA and State/Tribes

Hey All,

We are being asked to for any elevation MOUs, policies, etc. for disputes b/w EPA and states and tribes. We obviously have an elevation process for dealing with the Corps, but wasn't sure if we had something applicable here for vessels or any other program. Please let me know.

Thanks!

Mindy

Mindy Eisenberg

Associate Director, Oceans, Wetlands & Communities Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4504T

Washington, DC 20460

Cell Ex. 6 Personal Privacy (PP)

eisenberg.mindy@epa.gov

From: Weiler, Katherine <Weiler.Katherine@epa.gov>

Sent: Wednesday, January 06, 2021 5:22 PM

To: Frazer, Brian <Frazer.Brian@epa.gov>; Wall, Tom <Wall.Tom@epa.gov>; Yusuf, Istanbul <Yusuf.Istanbul@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>

Cc: Goodin, John <Goodin.John@epa.gov>; Connors, Sandra <Connors.Sandra@epa.gov>

Subject: ACTION due noon Friday, January 15, 2021: Compiling policies for the elevation of disputes between EPA and State/Tribes

OWCD, WRAPD,

OW is looking for each office to provide currently used elevation processes (e.g. as documented in elevation memorandums of understanding, policies, guidance, etc.) for disagreements with State and Tribal leaders (background information below). By Friday 1/15/21, please provide me with your single Division response.

For each elevation process, please provide the following:

- The entire document where the elevation policy is embedded (e.g., pdf or word document, and link if applicable)
- The citation for the document outlined exactly where in the document the elevation policy is located (e.g., page number, paragraph number, etc.)
- Point of Contact (e.g., both name and position title)

If you have a less formal elevation processes (those that are not specifically in policies, guidance, MOUs, etc.), please provide as much of the details available for those as well because OW is considering including.

Thanks!

Katherine

Background on the request from Sheila Frace:

Over the last year, a workgroup comprised of region and headquarters representatives have been working to draft an elevation policy that can be used in the absence of previously established and agreed to elevation policies between EPA and States/Tribes. The attachment is a version that currently is being vetted with OA sponsors and is included as an, FYI only. I am not convinced this will meet expectations any more than the earlier version I shared with you in May. (Subsequent to sharing that version with Senior Leadership, the Workgroup was sent back to the drawing board.)

In drafting this elevation policy, we were acutely aware that there are already multiple elevation policies throughout the agency. In order to avoid confusion of when this policy can be used, the Workgroup has reached out through the lead region coordinators to try to obtain a better sense of the universe of current and active elevation processes maintained by the Regions. I am working with Miriam to help compile those programmatic-level elevation policies maintained by Office of Water.